

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA**

**UNITED STATES OF AMERICA,**

**Plaintiff,**

**vs.**

**MILTON HERNANDEZ,**

**Defendant.**

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**CASE NO. 8:07CR369**

**MEMORANDUM  
AND ORDER**

This matter is before the Court on the Defendant's motion to file a notice of appeal out of time (Filing No. 118).

Defendant seeks to appeal from this Court's December 28, 2010, order and judgment summarily denying his motion filed under 28 U.S.C. § 2255. The motion to continue was filed on May 26, 2011, and also states Defendant's change of address.

Federal Appellate Rule of Procedure 4(b)(1)(A)(i) provides that, under the circumstances presented in this case, a criminal defendant's notice of appeal must be filed within 14 days of the entry of the judgment or order being appealed. Federal Appellate Rule of Procedure 4(b)(4) provides that the 14-day period may be extended by 30 days upon a finding of excusable neglect or good cause. If this case is considered as a criminal case, therefore, no relief is available.

Considered as a civil case, Federal Rule of Appellate Procedure 4(a)(1)(B) requires that a notice of appeal be filed within 60 days after the order or judgment being appealed. Federal Rule of Appellate Procedure 4(a)(5) states that the Court may extend the time to file a notice of appeal if a party shows excusable neglect or good cause. However, Defendant has not shown excusable neglect or good cause. Although the Defendant's change of address was a possible factor, five months have passed between the filing of

the court documents and the motion to extend the appeal time. The Defendant has provided no explanation with respect to the passage of a substantial amount of time and his receipt of the court documents.

IT IS ORDERED:

1. The Defendant's motion to file a notice of appeal out of time (Filing No. 118) is denied; and
2. The Clerk is directed to mail a copy of this order to the Defendant at his last known address.

DATED this 31<sup>st</sup> day of May, 2011.

BY THE COURT:

s/Laurie Smith Camp  
United States District Judge